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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,556	01/04/2001	Nimrod Megiddo	ARC9-2000-0138-US1	1847
33360	7590	09/26/2005	EXAMINER	
MARK D. MCSWAIN IBM ALMADEN RESEARCH CENTER, IP LAW DEPT. 650 HARRY ROAD CHTA/J2B SAN JOSE, CA 95120			KYLE, CHARLES R	
			ART UNIT	PAPER NUMBER
			3624	
DATE MAILED: 09/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,556

Applicant(s)

MEGIDDO, NIMROD

Examiner

Charles Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Rejections of Claims 1-17 of the prior office action are withdrawn based on Applicant's amendments.

Claim Rejections - 35 USC § 101

Rejections of Claims 1-8 and 13-17 under 35 U.S.C. 101 of the prior office action are withdrawn based on Applicant's amendments and a review of the specification, which shows that the transactional model recited is executed on a computer system.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6 and 8-17 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,868,400 *Sundaresan et al.*

As to Claim 1, *Sundaresan* discloses the invention as claimed, including in a computer-implemented (Background of the Invention, Figs. 7-13 and related text) method of brokering sales between parties, steps of:

- a) receiving request for broker's services from a client (Fig. 6, ele. 44; Col. 9, lines 33-46);
- b) requesting transactional information from said client for said brokered services (Figs. 7-10; Col. 9, line 47 to Col. 10, line 31);
- c) constructing a client transactional model from received transactional parameters (Col. 4, line 44 to Col. 5, line 2);
- d) identifying potential second parties to said transaction (Col. 14, lines 30-32);
- and
- e) eliciting participants to said transaction from said identified second parties (Col. 8, lines 26-46), whereby said transaction is structured to maximize spread (Col. 13, lines 8-17; Col. 14, line 64 to Col. 15, line 13).

With respect to Claim 2, *Sundaresan* discloses presentation of a modeled transaction to a client, acceptance indicating suitable parameters at Figs. 11 and 12.

With respect to Claim 3, *Sundaresan* discloses reworking a model and repetition at Fig. 8, "Please select your preferences below. The preferences will help us to select a better deal for you. You can change and refine these later."

With respect to Claim 4, *Sundaresan* discloses a client/buyer at Col. 9, line 26+.

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As to Claim 6, *Sundaresan* further discloses:

constructing a workable deal model responsive to said transactional model (Col. 4, lines 52-60);

identifying deals likely to be accepted by said client and at least one identified second party responsive to said transactional model and said workable deal model (Col. 6, line 60 to Col. 7, line 8); and

presenting (Fig. 14B, ele. 102; Col. 15, lines 19-26) identified deals having the largest spread to said client and each said identified second party (Col. 4, lines 60-61).

Concerning Claim 8, *Sundaresan* further discloses:

constructing a broker's profit function (Col. Col. 15, line 13-15);

employing a global optimization search for identifying a feasible deal that maximizes spread (Col. 15, lines 9-13); and

presenting proposed deals to said client and identified second parties (Col. 4, lines 60-61).

With respect to Claims 9-12, they are computer readable code means forms of Claims 1, 2, 6 and 8 and are rejected in a like manner. *Sundaresan* discloses computer systems comprising such means at Col. 9, lines 26-46, at least.

Regarding Claims 13-17, they are system forms of Claims 1, 2, 6, 7 and 8 respectively and are rejected in a like manner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,868,400 *Sundaresan et al.*

With respect to Claim 5, *Sundaresan* does not specifically disclose that the client is a seller. Official Notice is taken that seller driven transactions were old and well known at the time of the invention. For example, broadcast of seller offers of sale items was commonly done. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Sundaresan* to include a seller offer feature to broaden a seller's market.

Concerning Claim 7, see the discussion of Claim 6. *Sundaresan* further discloses several deal models (Col. 7, lines 3-24) of which the deal model producing maximum spread (\$170) is selected. *Sundaresan* discloses at Col. 7, lines 9-24 that an allocation of this spread is made among the buyer, seller and trading system (broker). Official Notice is taken that it was old and well known for brokers to attempt to maximize their profits on deals so as to realize greatest revenue for themselves. It is within the metes and bounds of *Sundaresan* that the allocation of spread to seller and buyer is 0%, and 100% to the broker, thus reducing minimization of profit; buyer and seller would still be satisfied, have received mutually agreeable deals. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Sundaresan* to maximize revenue from spread to brokers to maximize their profits.

Response to Arguments

Applicant's arguments filed July 7, 2005 have been fully considered but they are not persuasive.

Applicant attempts to swear behind the *Sundaresan* reference, but the attempt is ineffective. Applicant's affidavit is not persuasive because, while it shows conception of the invention as of March 23, 2000 (Page 4, Answer to Question 1, which states that Applicant knew on that date that the design would solve the problem, i.e. conception), Applicant provides *no* evidence of due diligence to reduce the invention to practice between March 23, 2000 and the date of constructive reduction to practice on the filing date of January 4, 2001.

The rejections are maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
September 19, 2005

Primary Examiner
Charles R. Kyle
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Charles R. Kyle